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RESOURCE GUIDE

DAY-IN-THE-LIFE VIDEO ADMISSIBILITY

“Day-in-the-life” videos are typically presented in court to demonstrate to jurors the severity of a plaintiff’s injuries and the impact those injuries have on his or her daily living activities. Footage of these activities—such as rising, eating, bathing, and receiving physical therapy—can vividly demonstrate the plaintiff’s dependency, limitations, and frustrations. This footage is intended to bring jurors inside the plaintiff’s life in a way that is virtually impossible to communicate with mere words¹, and circumvents the impracticality of having jurors visit the plaintiff themselves to witness the plaintiff’s injuries and challenges firsthand. Day-in-the-life video presentations are powerful tools for personal injury cases—but can you get them admitted as evidence?

Although day-in-the-life videos are considered similar to in-court demonstrations of injuries, their admissibility is subject to broad, although not absolute, judicial discretion². The party submitting the video must provide the appropriate legal foundation for its admission. Most courts will admit such day-in-the-life videos provided that (1) their probative value outweighs any prejudice to the defendant, and (2) there are no demonstrated improprieties in the video’s content or production techniques.

The party proffering the video as evidence must show that the videotape is an accurate portrayal of the events depicted. Someone who has personal knowledge of the videotape’s contents and is available for in-court cross-examination must lay the foundation: typically the plaintiff, a caregiver, or the most knowledgeable person for the video production company.

Although the scenes depicted in the video may be unpleasant, its prejudicial impact cannot substantially outweigh the video’s probative value. The plaintiff’s counsel must show that the daily activities in the video were typical for the plaintiff, so that the admission of the video would not be unduly prejudicial.

In order to be representational, day-in-the-life videos must have a foundation of accuracy and fairness. The issue of “unringing the bell” may be addressed by requiring the trial court judge to examine the particular video in camera to determine, whether the probative value of the particular videotape outweighs the possibility of prejudice.

To be admissible, day-in-the-life videos should not contain *inter alia*, artistic highlighting that emphasizes some scenes more than others, obvious exaggerations, self-serving behavior by the subject/plaintiff(s), scenes that serve mainly to create sympathy, or those that contain other unduly inflammatory material.

It’s best to hire an experienced legal video production company that understands these common admissibility requirements. The key to success is an open dialogue between the commissioning attorney and the video production team. ■

ENDNOTES

1. M. Dombroff, *Dombroff on Demonstrative Evidence* § 124-51 (1983 & Supp. 1990)
2. McCormick on Evidence §214.19 (4th Ed.)

Courtesy of Mark Alexander, Verdict Videos

Alexander is president of Verdict Videos [www.verdictvideos.com], which produces day-in-the-life settlement documentaries and wrongful-death video portraits for plaintiffs attorneys throughout California.

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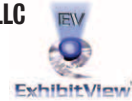
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